

BOARD OF ZONING APPEALS

MINUTES

January 25, 2005

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on January 25, 2005, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

DWIGHT GREENLEE, BICKLEY FOSTER, ERMA MARKHAM, RANDY PHILLIPS, JOHN ROGERS, JAMES SKELTON.

The following Board member was absent:

JAMES RUANE

SHARON DICKGRAFE – Law Department present.

HERB SHANER - Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER, Chief Planner.

SCOTT KNEBEL, Secretary.

ROSE SIMMERING, Recording Secretary.

JAMES SKELTON Calls meeting to order.

DALE MILLER Completes roll call.

SKELTON It is my understanding the meeting minutes for December 14, 2004, are currently in production and will be available at our next meeting. With that said I will ask Scott Knebel to present to us Item 1 on the Agenda.

SCOTT KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY'S REPORT

CASE NUMBER: BZA2004-00093

OWNER/APPLICANT: Sedgwick County c/o Paula Downs

REQUEST: Variance to Section IV-A.4. of the Unified Zoning Code to reduce the parking requirement from 108 spaces to 44 spaces

CURRENT ZONING: "GC" General Commercial

SITE SIZE: 1.06 acres

LOCATION: North of Pine and east of Main

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: Sedgwick County is requesting a variance of Section IV-A.4. the Unified Zoning Code to reduce the parking requirement for a Public Safety Center

proposed to constructed on 1.06 acres located north of Pine and east of Main. The applicant proposes to construct a 27,000 square foot building on the subject property (see attached site plan) to house public safety functions that are presently located within the County Courthouse located a block to the south. The proposed Public Safety Center has a parking requirement of 108 spaces; however, the applicant proposes to provide only 44 parking spaces on site. Such a reduction of the parking requirement can only be granted with the approval of the requested variance.

The applicant submitted the attached letter describing the need for the variance and the manner in which the variance requested meets the five criteria for the granting of a variance. The applicant indicates that approximately 40 employees will work at the facility scheduled over three shifts and that the proposed 44 on-site spaces will be sufficient to meet the day-to-day parking needs of staff and visitors. The applicant also indicates that Sedgwick County has parking spaces currently used by these employees that are located within a parking garage that is less than a block away across Main. Section IV-A.10. the Unified Zoning Code permits required parking to be located off-site if certain conditions are met; however, the parking garage does not meet the code requirements because it is located across an arterial street. The applicant further indicates that agreements have been reached with surrounding property owners to use their parking during rare emergency situations such as major storms when the Public Safety Center will utilize additional staff.

ADJACENT ZONING AND LAND USE:

NORTH	“GC”	Office
SOUTH	“GC”	Office
EAST	“B”	Apartments
WEST	“GC”	Office

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property will be developed with a Public Safety Center that houses far fewer employees per square foot of building area than anticipated by the parking regulations. Additionally, the property owner has additional off-site parking spaces in the near vicinity and has made arrangements with surrounding property owners for overflow parking in rare emergency situations when additional staff will utilize the facility.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as sufficient parking spaces are available on-site to meet the needs for day-to-day parking of staff and visitors, so adjacent properties should not be negatively impacted by vehicles from the subject property illegally parking on adjacent properties. Additionally, the site plan provides parking for visitors immediately adjacent to the entrance, as visitors would be the most likely to park illegally on adjacent properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant would be required to locate the Public Safety Center on a different property at a significant cost if the facility cannot be located on the subject property by the granting of the variance to reduce the parking requirement.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the applicant provides tax-supported

public safety services for which there is a community need that cannot be met in an economical manner unless the variance is granted.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Zoning Code inasmuch as parking will be provided on-site in an amount sufficient to meet the needs of staff and visitors and arrangements have been made to provide parking off-site in unusual circumstances when overflow parking is needed.

RECOMMENDATION: It is staff's opinion that the requested parking requirement reduction is appropriate. Should the Board determine that the conditions necessary for the granting of the variance exist, then it is the recommendation of the Secretary that the variance to reduce the parking requirement from 108 spaces to 44 spaces be GRANTED, subject to the following conditions:

1. A minimum of 44 parking spaces shall be provided on-site in general conformance with the approved site plan.
2. The parking spaces labeled "Visitor Stall" on the site plan shall be limited to visitor parking and shall be marked with signage that complies with the Sign Code.
3. Occupancy of the subject property shall be limited to a government-operated "Public Safety Center" or a facility determined to be similar by the Zoning Administrator. A change of occupancy shall require the provision of additional parking spaces to meet the parking requirement of the Unified Zoning Code or the granting of another variance.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

BICKLEY FOSTER Do you have some copies of agreements with other locations for parking?

KNEBEL We don't have copies of those agreements. That is something that this Board could require to have some sort of copy of agreement as a condition of approval. I did not do that, primarily because I think the parking itself that they are going to provide is more than enough for what they indicate the number of employees are, plus they own this garage which is very close.

PAUL DOWNS, Sedgwick County, 538 N. Main This building we are hoping to send out for bid next month, pending the approval of the parking variance of course. The building is approximately 27,000 square feet, and it just will barely hold the functions that we are trying to put in it. So the site is very limited, but it is a very good site in conjunction with our courthouse complex. We have spoken with the Wichita Area Builder Association and Eby Construction, who owns adjacent parking stalls, and they have indicated that there is no problem, in overflow or high emergency traffic flow, that we could utilize their parking.

RANDY PHILLIPS You don't mind having those agreements in place in order to have that to get those approvals?

DOWNS We have verbal agreements, and I have no problem getting a written agreement.

PHILLIPS You know how verbal agreements are sometimes, and I think particularly in situations like this, I would like to see to have those agreements in place so we don't have any problems in the future. Ownership of properties can change hands.

FOSTER Could you articulate a bit about the type of visitors or what portion of them might be there for an emergency center like that?

DOWNS Day to day visitors will be limited to police officers stopping in to pick up tape transcripts for cases that they are testifying on, deliveries of mail, or any packages that we may receive. We do have a loading dock on the back side of the building, on the Market Street side, so those kinds of deliveries will go to a large garage door opening. Visitors are limited. In the case of an emergency or full blown emergency, most of it will be county staff, there will be some city fire, city police, depending on what the emergency is, so that if we had a tornado it would be loaded with people from public works, anybody like that. Most of the people will come from across the street at the County Courthouse and some will come from City Hall, but our visitors day to day are limited to police officers who will drop by to get tapes.

FOSTER How often do you envision having an emergency like that?

DOWNS We had the tornado in 1999 that hit Haysville. That triggered a full emergency, and then when the Police Department put together the BTK Task Force, they were using the emergency operation center in our basement.

FOSTER So not too often then?

DOWNS Very few occasions. There will be some training opportunities because we do have a training room. That will be mostly for staff, and that will be very limited.

ERMA MARKHAM You said emergency and training, I do know that the Builders Association does have meeting there at that facility where the parking lot is filled to capacity, and we have to find spaces around it and they have training as well. So do you foresee any problem with you having a class and some of the other areas having a class and this creating a parking hazard?

DOWNS Most of the parking we envision will occur in the parking garage that we own, the county parking garage. Even most of the staff will not parking in that parking lot. They will continue to park in the protected garage, instead of open parking. The parking lot will be very rarely be full in and of itself, and us relying on the surrounding parking will be very limited to those emergencies that happen, once every two or three years.

MARKHAM Now, the training, would that entail a class?

DOWNS It could, but it is mostly for the employees on site.

PHILLIPS moved MARKHAM seconded, THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY’S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY’S REPORT.

MARKHAM What about the agreements we discussed?

PHILLIPS Yes, I do want to amend the motion to include the recommendation to get the agreement letters in place, so let’s do include that condition.

PHILLIPS moved MARKHAM seconded, THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY’S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY’S REPORT WITH AN ADDITIONAL CONDITION FOR A WRITTEN AGREEMENT FOR OVERFLOW PARKING ON ADJOINING PROPERTY SHALL BE FILED WITH THE SECRETARY OF THE BOARD PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.

MOTION carries 6-0.

SKELTON Moving onto Agenda Item 2, Case No. BZA2004-94.

KNEBEL, Planning staff presents staff report and slides. Staff recommends approval, subject to conditions, in the following staff report.

SECRETARY’S REPORT

CASE NUMBER:	BZA2004-00094
OWNER/APPLICANT:	Starship Enterprises LLC c/o Jim Collins
AGENT:	PKHL Architects c/o Vince Haines
REQUEST:	Variances to reduce the parking requirement from 29 spaces to 7 spaces, to waive the screening requirement, and to waive the landscaping requirements
CURRENT ZONING:	“LC” Limited Commercial
LOCATION:	Northwest corner of Douglas and Chautauqua (2936 E. Douglas)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: A commercial building was constructed on the subject property at the northwest corner of Douglas and Chautauqua in 1926. At the time the building was

constructed, the zoning regulations did not require parking spaces to be provided and did not require screening from adjacent residential properties, and the Landscape Ordinance was not adopted until 1992. As indicated in the attached justification letter, the building was damaged by a fire, and the value of the proposed remodeling to house an indoor vehicle sales business exceeds 50 percent of the value of the existing structure. Therefore, Section VII.C.1. of the Unified Zoning Code (UZC) requires the subject property to come into compliance with existing zoning and landscape regulations as part of the proposed remodeling. The applicant has requested variances of two requirements of the zoning regulations (parking and screening) and a variance of the landscape regulations as described below.

Section IV-A.4. of the UZC requires that the proposed indoor vehicle sales business provide 29 on-site parking spaces; however, most of the subject property is covered by the building and only 7 parking spaces can be provided on-site. Therefore, the applicant is requesting a variance to reduce the parking requirement from 29 spaces to 7 spaces.

Section IV-B.3. of the UZC requires that screening be provided along the north property line because the property across the alley is residentially-zoned. Since the entire property is used for either the building or parking, there is no place on the subject property that screening can be located while still providing some parking on-site. Therefore, the applicant is requesting a variance to waive the screening requirement.

The Landscape Ordinance requires a landscape street yard along Douglas, a landscape buffer along the north property line, and parking lot screening along Chautauqua. Since the entire property is used for either the building or parking, there is no place on the subject property that landscaping can be planted. Therefore, the applicant is requesting a variance to waive the landscaping requirements.

ADJACENT ZONING AND LAND USE:

NORTH	"TF-3"	Duplex
SOUTH	"LC"	Office/apartments
EAST	"GC"	Grocery store
WEST	"LC"	Office

The five conditions necessary for approval apply to all variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is an older commercial property that was developed at a time when parking, screening, and landscaping were not required. While the property has been damaged to an extent that conformance with current, more suburban, regulations is required, the shell of the building was not damaged; therefore, the remodeling does not require demolition of the structure or a complete redevelopment of the site. Since the exterior conditions of property will not change, the property is in a unique situation that was not contemplated by the non-conformity requirements of the zoning regulations, which anticipate complete redevelopment of damaged properties and therefore requires full conformance with current, more suburban, regulations.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances requested would not adversely affect the rights of adjacent property owners, inasmuch as the property has existed in the proposed condition since 1926 with no apparent adverse affects on adjacent properties. The parking to be provided on-site is similar to the

number of spaces provided for all commercial businesses along this stretch of Douglas, and none of the existing businesses provide screening or landscaping, with no apparent adverse affects on properties in the area.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning and landscaping regulations constitutes an unnecessary hardship upon the applicant, inasmuch as complying with the parking, screening, and landscaping regulations would entail demolishing the existing structure or structures on adjoining properties to completely redevelop the property or area at significant expense.

PUBLIC INTEREST: It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the public has an interest in maintaining the character of the area and the rehabilitation of the damage to the structure on the property. The area is developed with commercial structures built to the property lines with minimal parking that is located in the back and without screening or landscaping, except in the right of way. Complying with the zoning and landscaping regulations would give subject property a suburban character, which would clash with the character of the area and would be contrary to the public interest. Also, complying with zoning and landscaping regulations is so costly that the structure on the property probably would not be rehabilitated, which also is contrary to the public interest.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning and landscaping regulations, inasmuch as among the stated intentions of the regulations is to encourage orderly growth and enhance the quality of life. Requiring compliance with the zoning and landscaping regulations would result in a suburban-style development that is out of character with the surrounding area, which is contrary to the intent of the regulations.

RECOMMENDATION: Should the Board determine that the conditions necessary for the granting of the variances exist, then it is the recommendation of the Secretary that the variances to reduce the parking requirement from 29 spaces to 7 spaces, to waive the screening requirement, and to waive the landscaping requirements be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be completed within one year of the granting of this variance, unless such time period is extended by the BZA.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

JIM COLLINS, Starship Enterprises LLC, 914 E. Douglas, Wichita, KS Applicant, I am the owner, and I bought the building from the previous owner Cottonwood Interiors. They rented it to the Raw Wood Furniture people, and the building caught fire a year ago last August. I purchased the building from them, and we are in the process of renovating the building.

FOSTER As you know, I have problems in regards to variances that are not numerical, and I hope we solve that problem sometime. But this particular one deserves a variance, and there is simply no other choice in order to use this building and use the parking in the back of it.

FOSTER moved GREENLEE seconded, THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY'S REPORT WITH THE FOLLOWING AMENDMENT ON CONDITION #1: THE SITE SHALL BE DEVELOPED IN GENERAL CONFORMANCE WITH THE APPROVED SITE PLAN DATED DECEMBER 20, 2004, WHICH RETAINS THE EXISTING LANDSCAPING.

PHILLIPS Your motion will include waiving of the screening requirement and the landscaping requirements as well?

FOSTER Yes, but retaining the existing landscaping.

PHILLIPS Addressing the fact that there are three specific variances here?

FOSTER In other words, it is saying that we are granting the variances.

PHILLIPS From what I understand from staff's explanation, waiving contemporary landscaping requirements by allowing the current landscaping to exist as it is, that is what I understood.

FOSTER What you see in that picture on the screen.

MARKHAM Will that comply with your request?

COLLINS Yes, we are going to retain the existing landscaping, and we will not remove anything. In fact, we will plant new grass.

SKELTON It will not impact your plans for the building?

COLLINS No.

FOSTER Mr. Phillips has pointed out that it might be good where it talks about waiving the landscaping requirements to clarify the fact that it would still retain what landscaping is already there.

Motion carries 6-0.

SKELTON Agenda Item 3, Report from Central Inspection.

HERB SHANER OCI Report BZA2003-65, the building is up. Permits were pulled, and the building is sitting where it is suppose to be.

FOSTER We have many cases here on parking, and I wonder whether we are right or not. I wonder if there is an opportunity to spot check these. I would be interested to know how some of these cases, that are close calls, I think it would be good for us to have feedback.

SHANER They usually have a year, and when that year is up from the date that you approved it, then I go out and see what is there on the site and report to you.

FOSTER Even if there is not a problem it would be good to know if it worked out.

Meeting adjourned at 1:53 p.m.